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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,481

04/27/2007

Martin Bunce

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1607

22852

7590

07/12/2010

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
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EXAMINER

YOUNG, RACHEL T

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/579,481	<b>Applicant(s)</b> BUNCE, MARTIN	
	<b>Examiner</b> RACHEL T. YOUNG	<b>Art Unit</b> 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/19/10</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Amendment***

1. This office action is responsive to the amendment filed on 4/21/10. As directed by the amendment: claim 5 has been amended, no claims have been canceled, and no new claims have been added. Thus, claims 1-8 are presently pending in the application.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNary (5,899,200) in view of Dehaven (6,003,205).

Regarding claim 1, in fig. 3 McNary discloses an inhaler for dispensing doses of medicament from a container under user activation (abstract) and the inhaler comprising a body 4 including a mouthpiece (8, Fig. 6) through which the medicament is dispensed and a cap 9 which can be placed in a position to substantially occlude the mouthpiece and the cap is attached to the body by a strap 10 which pivots from the body and the cap must translate away from the mouthpiece prior to the pivoting of the strap. McNary is silent regarding that the cap can slide on the strap. However, in

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figures 1 and 3 Dehaven teaches a cap 22 that slides on a strap 16. Cap 22 must slide along groove 19 in order to allow the strap 16 to pivot for replacement or removal of the drink 11 being contained. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify McNary's cap and strap with a cap that slides on a strap, as taught by Dehaven, for the purpose of providing a more basic strap that doesn't need to be folded.

Regarding claims 2-3, in fig. 3 and 6 McNary discloses that the mouthpiece 8 projects from the body 4 and that the cap both occludes the mouthpiece and overlies the projection of the mouthpiece.

Regarding claim 4, McNary discloses that the inhaler is a plastic material (Col. 2, ll. 46-49) and the strap and body are formed as a unit (Col. 2, ll. 46-49). McNary is silent regarding that the strap and body are molded, Re claim 4, the claimed phrase "said strap and said body are molded" is being treated as a product-by-process limitation and since it has been held that a product-by-process limitation is not construed as being limited to the product formed by the specific process recited, therefore, even though McNary is silent as to the process used to form the strap and body, it appears that the McNary's product would be the same or similar as that claimed, especially since both applicant's product and the prior art product is made of plastic material.

Regarding claims 6-7, McNary discloses that the container is pressurized (abstract line 1), and that the inhaler is a metered dose inhaler (abstract, lines 1-2, Col. 1, ll. 1-12)

Regarding claim 8, the modified McNary discloses that the cap is attached to the strap by means of a lug (Dehaven, 25, fig. 2-4).

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over McNary/Dehaven as applied to claim 1 above, and further in view of Pollet et al. (2004/0089292).

Regarding claim 5, the modified McNary discloses a strap and body with a base having contours, but is silent regarding that the strap underlies the body and substantially follows the contours of the base. However, in fig. 5b Pollet teaches a strap 10 that underlies the body and substantially follows the contours of the base. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the modified McNary's strap to follow the contours of the body's base, as taught by Pollet, for the purpose of providing a cap that remains attached to the inhaler body at all times in order to not lose the cap.

### ***Response to Arguments***

5. Applicant's arguments filed 4/21/10 have been fully considered but they are not persuasive. Applicant argues on page 8, 2<sup>nd</sup> paragraph that Dehaven's caps 12 or 20 do not occlude a mouthpiece, however the only modification being made to McNary's cap 9 in fig. 3 is to add the slide tab 25 and strap 16 with keyhole 19 of Dehaven to allow the cap to slide along a strap. This modification would still allow the modified McNary's cap to occlude the mouthpiece. Applicant argues on page 8, last paragraph that Dehaven does not disclose a cap that is arranged to slide on a strap and that the

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strap merely slides along tab 25 as the cap remains in place. However, McNary's cap is not being modified to remain on the mouthpiece and with the modified strap 16 and tab 25 of Dehaven there is no structure to suggest that the modified McNary's cap could not be translated along the strap before removal.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL T. YOUNG whose telephone number is (571)270-1481. The examiner can normally be reached on mon-thurs 7 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/RACHEL T YOUNG/  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771